UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

FRED MEYER

Employer

and Case 19-RD-3652

KIMBERLY ANN WATSON, an Individual

Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 1496

Union

REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record[1] in this proceeding, the undersigned makes the following findings and conclusions.[2]

I. SUMMARY

The Employer operates numerous grocery stores in the state of Alaska, including a store located at 3755 Airport Way, Fairbanks, Alaska (West Fairbanks Store). The Union represents a unit consisting of all full and regular part time employees employed by the Employer at its West Fairbanks Store in the grocery department.[3] Petitioner, an employee at the West Fairbanks Store, filed the instant petition seeking an election among those employees to determine whether a majority of bargaining unit employees desired to remain represented by the Union for the purposes of collective bargaining. The Union asserts, however, that the petition is barred by a collective-bargaining agreement that was negotiated and ratified prior to the filing of the instant petition. The Employer and Petitioner contend that the agreement does not bar the petition because it was never signed by the parties. Based on the record as a whole, I conclude that the ratified

---

1 The Employer and Petitioner timely filed briefs, which were duly considered.

2 The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3 The Union also represents employees at five or more other Employer stores in Alaska, and represents a separate unit of meat and seafood department employees at the Employer's West Fairbanks Store.

collective-bargaining agreement satisfies the Board's contract-bar requirements and, therefore, find that the instant petition should be dismissed.

Below, I have set forth the record evidence relating to the contract bar issue, an analysis of applicable Board law, a conclusion, an order dismissing the petition, and the procedures for requesting review of this decision.

II. EVIDENCE

The Union is the certified collective-bargaining representative for all full and regular part time employees employed by the Employer at its West Fairbanks Store in the grocery department. The Union's representatives are located in Anchorage and Fairbanks, Alaska, and the Employer's headquarters is located in Portland, Oregon. Because of the distance and scheduling difficulties, the Union and the Employer have regularly communicated and settled minor grievances through e-mails.

In early January 2005,[4] the Employer and the Union decided to conduct their collective-bargaining negotiations for the West Fairbanks Store over the telephone and e-mail because the Employer's chief negotiator, Cynthia Thornton, could not travel to Fairbanks until late February 2005.[5] Following a series of telephone calls between Thornton and the Union's chief negotiator, Walter Stuart, the Employer and the Union reached an agreement on all terms for a collective-bargaining agreement on January 5, 2005.[6]

At 3:32 P.M., on January 5, Stuart received an e-mail from missy.hector@fredmeyer.com, who is Thornton's assistant. The e-mail stated, "Here is the revised proposal that we talked about. I have put [it] in the form of an offer." The e-mail identified two minor changes and concluded by stating that that if there were no further questions or issues, the Employer would add the scheduled wage increase for 2008. The e-mail attached the negotiated collective-bargaining agreement and was signed "Cindy."[7] Later that same day, Stuart sent an e-mail to Thornton, in which he thanked her for "getting this settlement done so quickly" and stated that the Union would conduct a ratification vote on January 13th and 14th.

At 8:01 A.M., on January 6, Stuart received an e-mail from cynthia.thornton@fremeyer.com. The e-mail stated "glad we could get it done. There is a typo… We will resend it. On pg. 8 - we will delete the part that says the Employer reserves the right to change its proposal." The e-mail was signed "Cindy." Six minutes later, at 8:07 A.M., Stuart received an unsigned e-mail from missy.hector@fredmeyer.com, which was titled "'Revised' Offer" in the subject line. The e-mail stated "Here ya go!" and attached the corrected collective-bargaining agreement. Stuart testified that when he received the collective-bargaining agreement there were some errors to the wage scale, which he identified to the Employer later that day. At 2:49 P.M., January 7, Stuart received an unsigned e-mail again from missy.hector@fredmeyer.com, which was titled "REVISED OFFER -W FAIRBANKS GROCERY" in the subject line. The e-mail stated "Third time is a charm" and attached the final, corrected collective-bargaining agreement negotiated by the parties.

---

[4] All dates are in 2005 unless otherwise noted.

[5] While it is not clear from the record, it would appear that the Employer and the Union were negotiating an initial labor agreement for the West Fairbanks Store.

[6] Stuart, the Union's President, was the only witness to testify at the hearing in this case.

[7] Stuart provided unrebutted testified that Cynthia Thornton commonly signed her e-mails "Cindy."

On January 13 and 14, the bargaining unit ratified the collective-bargaining agreement. By letter to Thornton dated January 17, Stuart informed her that the collective-bargaining agreement had been ratified and thanked her for her cooperation. Neither the Employer nor the Union asserted that there was a problem with the collective-bargaining agreement. Indeed, the Employer admitted during the hearing and in its brief that the Union and the Employer had reached an agreement pursuant to its collective-bargaining negotiations. Shortly thereafter, the Employer implemented the collective-bargaining agreement. Moreover, the Employer does not actually dispute the authenticity of the e-mails and letter between the Union and Employer as it relates to the parties negotiated labor agreement.

The petition at issue in the present case was filed on February 1. On February 10, the Union's Director of Organizing, Gaither Martin, sent a letter to Thornton referencing a February 4 conversation between Thornton and Stuart and requesting that Thornton sign the collective-bargaining agreement. By letter dated March 1, Thornton sent Stuart two signed copies of the collective-bargaining agreement.[8] The record contains the critical documents noted above.

III. ANALYSIS

While there is no dispute about whether a collective-bargaining agreement was reached and what that agreement is, the dispute in this case centers on whether the trail of e-mails between the parties and Stuart's January 17 letter, together, constitute sufficient signatures so as to bar further processing of the instant petition. I find that the parties' collective-bargaining agreement meets the Board's contract bar requirements and therefore find that the instant petition should be dismissed.

The Board's contract-bar rule is designed to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). The "Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by [its] interest in stability and fairness in collective-bargaining agreements." *Madelaine Chocolate Novelties,* 333 NLRB 1312 (2001) (quoting *Direct Press Modern Litho, Inc.,* 328 NLRB 860, 861 (1999).

In order to bar an election under the contract-bar rule, a contract must meet certain formal and substantive requirements. The contract must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship and both parties must sign the contract prior to the filing of the petition that it would bar. *Seton Medical Center*, 317 NLRB 87 (1995). This requirement "does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance." *Pontiac Ceiling & Partition Co.,* 337 NLRB 120, 123 (2001). The documents relied on to meet those requirements, however, must clearly set out the terms of the agreement and leave no doubt that they amount to an offer and acceptance of those terms. *Branch Cheese*, 307 NLRB 239 (1992); *Georgia Purchasing, Inc*., 230 NLRB 1174 (1977). The party that alleges the existence of a contract bar bears the burden of proving it. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

[8] On February 18, 2005, the Union filed an unfair labor practice charge alleging that the Employer violated Section 8(a)(5) of the Act by refusing to sign the collective-bargaining agreement. The Union withdrew the charge after the Employer signed the collective-bargaining agreement.

Contrary to the Employer's position, I do not find that the absence of signatures on the ratified collective-bargaining agreement between the Employer and the Union before the filing of the petition, negates a contract-bar finding here. The Board has not construed the signature requirement as strictly requiring that the Employer and the Union sign the agreed upon collective-bargaining agreement. Rather, the Board requires that the parties "signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing other documents which do so." *Waste Management of Maryland, Inc.*, 338 NLRB No. 155 (2003). *See also De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998) ("Without the Employer's signature on the collective-bargaining agreement, or some document referring thereto, the agreement is insufficient to act as a bar.")

In a case that is similar to the present one, the Board found that the absence of signatures on the collective-bargaining agreement was not fatal to finding a contract bar where the union and the employer signed other documents referencing the collective-bargaining agreement. *Holiday Inn of St. Pierce*, 225 NLRB 1092 (1976). There the employer's attorney sent the finalized collective-bargaining agreement with a signed cover letter to the union. The union subsequently ratified the collective-bargaining agreement. The Board found "that the [e]mployer's signed covering letter accompanying its proposal, coupled with the [u]nion's execution of the proposal prior to the filing of the petition, satisfies the signing requirement in order to provide bar equality to the contract." *Id*.

Additionally, the Board has found a collective-bargaining agreement concluded through the exchange of written telegrams, was sufficient to bar a petition. *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977). There, the union sent a telegram to the employer detailing the terms of the agreement that had been reached except for one provision that the parties had not agreed to. Following receipt of the union's telegram, the employer and union reached agreement on the remaining term. The employer then sent the union a written telegram confirming the existence of the collective-bargaining agreement under the terms of the union's prior telegram. A written memorandum memorializing the parties' agreement was not signed until after a decertification petition was filed. Nevertheless, the Board concluded that the written offer and acceptance by telegrams, which incorporated the agreements reached by the parties, was sufficient to bar the petition.

I find that the rationale of the aforementioned cases applicable here. On January 6, the Employer's representative Thornton sent a signed e-mail from her e-mail address stating "glad we could get it done" and "we will resend it." It is clear from the record that by "it" the Thornton was referencing the completed collective-bargaining agreement. Six minutes after this e-mail was sent, the Employer sent the collective-bargaining agreement to the Union. Thus, like the cover letter in *Holiday Inn of St. Pierce*, the Employer's signed e-mail is sufficient to demonstrate the Employer's acceptance of the completed collective-bargaining agreement. Additionally, like the telegrams in the *Georgia Processing* case, the Employer's e-mails were written and identified the Employer's agents by name. I find no legitimate reason to distinguish between a written e-mail and a telegram or letter. An e-mail today is tantamount to a telegram or letter and is widely recognized as satisfying the requirement for the filing of documents.[9] Thus, I conclude that the exchange of printed e-mails that identified the negotiator's name, together with the e-mail attachments

[9] Indeed, the Board now permits the filing of many documents by e-mail pursuant to its E-Filing project.

and Stuart's January 17 signed acceptance letter, are sufficient to satisfy the contract-bar rule's signature requirement in the circumstances of this case.

The Employer in its brief, argues that Stuart "has no independent knowledge of who wrote or transmitted the e-mails he received or even if they were sent from Fred Meyer." However, that claim is not supported by the record. More importantly, the Employer provided no testimony, documents or any other evidence to seriously call into question the authenticity of those e-mails. Rather, the Employer's argument appears to attack the reliability of e-mails, in general. However, such attacks are equally applicable to telegrams and letters and have no merit in this case especially where the Employer fails to dispute the actual authenticity of the Employer's e-mails to Stuart.

Moreover, the Employer now objects, while it did not do so during the hearing, to the leading nature of the questions asked by the Union's counsel of Stuart. However, it would appear that the leading questions were largely over facts that truly were not in dispute. Indeed, the Employer provided no witnesses or documents to rebut any of Stuart's testimony critical to this case. With respect to the Employer's objection during the hearing regarding the hearing officer's alleged admission of parol evidence, which objection was restated in the Employer's brief, I do not rely on such testimony or alleged parole evidence for finding a contract bar in this case. Rather, that finding is based on the documents submitted by the Union, which documents clearly manifest the terms of the parties' agreement and leave no doubt that they amount to an offer and an acceptance of those terms and which documents represent the parties' affixing of their signatures.[10] In sum, I find no grounds supporting the Employer's objections noted above.

I also find the cases (*Waste Management of Maryland, Inc.*, supra; S*eton Medical Center*, supra; and *De Paul Adult Care Communities, Inc*., supra) relied on by the Employer are distinguishable from the present case. The Board's decisions in *Waste Management of Maryland, Inc.*, and *Seton Medical Center* concerned the legitimacy of the purported collective-bargaining agreement, rather than the adequacy of the parties' signatures. In both those cases, the Board found no contract bar because the evidence failed to demonstrate what were the precise documents and/or terms and conditions of employment to which the parties had agreed. In the present case, the Employer admits that it agreed to the substantive terms and conditions of employment as demonstrated by the ratified collective-bargaining agreement. With respect to the Employer's reliance on *De Paul Adult Care Communities, Inc*., that decision is distinguishable from the case before me in that, there, the Employer did not sign the collective-bargaining agreement or any other document referring to the collective-bargaining agreement. In the present case, however, the Employer's January 6, e-mail confirms that the collective-bargaining agreement was complete, refers to the collective-bargaining agreement and is signed by the Employer's chief negotiator. Those e-mails were then followed by confirming e-mails and by Stuart's signed letter of January 17 confirming ratification of the agreement by employees.

In light of the above and the record as a whole, I find that the Employer and Union had signed off on a new agreement covering the bargaining-unit employees prior to the filing of the petition in this matter. Therefore, that agreement serves as a contract bar to further processing of the petition.

---

[10] The Board has found multiple or informal documents to constitute a collective-bargaining agreement for the purposes of establishing a contract bar, rather than "parole evidence" as asserted by the Employer. See *Seton Medical Center*, 317 NLRB 87 (1995) and *Georgia Purchasing, Inc.* supra.

IV. CONCLUSION

On the basis of the foregoing, I find that the contract reached by the Employer and the Union bars the processing of the instant petition. Accordingly, I shall dismiss the petition.

V. ORDER

The petition is hereby dismissed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by **5 p.m., EST on September 13, 2005.** The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

DATED at Seattle, Washington this 30th day of August 2005.

/s/ [Catherine M. Roth]

Catherine M. Roth, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174